



## Deposition Disposition

Providing sworn testimony in an attorney's office prior to trial leads to some interesting balancing decisions.

If the deposition is to be recorded only via a court-reporter transcript, one can get the best-reading deposition by abandoning normal speaking conventions, such as long pauses between sentences but mid-sentences as well. While unpleasant to listen to, this seems to produce the most accurate and appropriate text.

However, add a video-camera to the mix and the speak-for-text approach breaks down. Yes one can, and should, take pauses to consider the question and collect thoughts before speaking, but not before announcing intentions to do so, such as:

- "I'd like to consider your question thoroughly if I may."
- "May I have a moment to review my recollection?"
- "I need a moment to be able to answer that accurately, please"

Pretty much what one might do on the stand in front of a jury, though control of one's gaze may be that much more important.

Specifically, there have been a number of articles in the popular press about how to determine someone's truthfulness by their eye movement. Some articles suggest that "eye left" = deceit. Another article says that the speaker's handedness (right handed vs left handed) needs to be used to determine the deceitful direction. Many articles add an up/down component to the description.

The reason that this may be more important in a video-taped deposition than live jury trial is video playback is on a screen zoomed in on the speaker's face and is the only thing jury members are focusing on. Contrast that with live testimony where the jury sees what they've been watching all along – a person in a court room. Image the hypothetical instance where opposing counsel could get everyone in the jury to stand right in front of the witness, just a few feet away, just prior to a specific question. Eye movements seen from 5 feet away can be so much more noticeable than at, say 15 to 25 feet.

So what to do? Especially if you're an empathetic person like me for whom a human face is a portal to a soul! One thing that I've tried is to maintain my general focus just above the attorney's head (whether opposing counsel or my own). That way I can concentrate on the answer without distraction and without having to look away. But of course this is not full proof.

Looking up and/or away when deeply thinking is a strong habit to break. I find myself doing this even whilst talking on the phone or just looking at a computer screen. It's also a social thing – part of the audio-visual communication behaviors we all use in face-to-face interaction to help govern who wants to talk when. Physical gestures such as looking away, scrunching eye-brows, raising a finger, waving one's hand(s), touching one's chin, etc. etc. tells the listener that you've heard their comment/question, are considering it and intend on responding.

Another potential problem with this “look at the attorney's halo” method is that it may be too effective. Specifically, if you've effectively convinced yourself that you are looking at a blank screen (or blank back-of-the-courtroom wall), you may somewhat forget that you are still speaking to people watching you live. Real people don't just stare entirely in one direction when speaking for long periods of time. Maybe if one is testifying as a purely technical expert witness, the “robotic nerd” effect might not be too harmful, but it something I want to avoid, *especially* if trying to explain a complex issue like statistical testing.

A rather experienced Expert Witness friend suggested asking for the question to be repeated in order to have more time to consider answer whilst not continually under the microscope so-to-speak. This seems like it could be a really good idea, but not for me. I'm already asking for questions to be repeated / rephrased so often because I really didn't get the full question. It's kind of like the German language when the verb doesn't come until the end of the sentence. And not simple verbs like in Yoda-speak. Mark Twain's description seems apt:

And that sentence is constructed upon the most approved German model. You observe how far that verb is from the reader's base of operations; well, in a German newspaper they put their verb away over on the next page; and I have heard that sometimes after stringing along the exciting preliminaries and parentheses for a column or two, they get in a hurry and have to go to press without getting to the verb at all. Of course, then, the reader is left in a very exhausted and ignorant state.

Thinking just now how I would write this in German, my eyes just went straight up to the ceiling...